IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6978 OF 2004

SAHADEO MAHADEO PAWAR .. PETITIONER

Versus

YUSUF MAMUJI MADRASWALA .. RESPONDENTS

Mr. H. N. Kore for petitioner

CORAM:-SMT. RANJANA DESAI, J.

DATED:-13/4/2005

P.C.

The petitioner is original plaintiff in R.A.D. Suit No. 3606 of 1986 . It is his case that he is a tenant in respect of the suit premises. According to him defendant Mr. Yusuf had created a tenancy in his favour in respect of the suit premises. According to him in the trial court in examination-in-chief as well as in the cross-examination the defendant has made a statement that the tenancy in respect of the suit premises was created in favour of the

plaintiff with the express/implied consent of the landlord. According to him this statement shows that the tenancy was created in favour of the plaintiff with the consent and knowledge of the landlord. The landlord was not made a party to the suit.

2. After the suit was dismissed the plaintiff filed an appeal being Appeal No. 115 of 2003 before the Division Bench of the Small Causes Court. According to him in the aforesaid circumstances he had to take out Interim Notice No. 954/04 praying that he may be permitted to amend the plaint by adding the landlord as a party defendant in the suit The lower appellate court rejected this application and hence this petiton.

3. I have heard at some length the learned counsel appearing for the petitioner. He contended that in the cross-examination the defendant has clearly stated that the tenancy was created in favour of the plaintiff with the express/implied consent of the landlord and, therefore, it was absolutely necessary and in the interest of justice to implead the landlord as party to the suit. He submitted that grave injustice will be caused to the plaintiff, if the landlord is not allowed to be impleaded as party-defendant. He submitted that amendment can be carried out at any stage of proceeding and, therefore, the lower appellate court erred in rejecting the application.

4. I am unable to agree with the learned counsel. It is pertinent to note that

in paragraph 1 of the written statement the defendant had specifically pleaded that he is a monthly contractual tenant in respect of the suit premises and as such cannot create tenancy or licence in favour of the plaintiff in the year 1976 in contravention of the provisions of the Bombay Rent Act. Therefore, the plaintiff was aware of the defendant's case. In spite of this during the pendency of the suit the plaintiff did not make any prayer for amendment of the plaint. It is only at the appeal stage when according to the plaintiff, the defendant made some statement in his evidence that the tenancy was created by express/implied consent of the landlord that he came out with an application for amendment.

5. If the plaintiff knew about the defendant's case he ought to have made the amendment application during the course of the trial. The lower appellate court is right when it observed that the plaintiff is now trying to introduce a new case that he is a lawful sub-tenant. Such amendment cannot be granted at a belated stage.

6. I am informed that the defendant has filed a suit against the plaintiff being L. E. & C Suit No. 221/238 of 2002. In that suit he has not impleaded the plaintiff as a party defendant. It would be, therefore, open to the plaintiff herein to make an appropriate application in the trial court for impleading himself as a party defendant and if such an application is made, the trial court will pass appropriate order on the said application in accordance

with law.

7. The petition is rejected